

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

MILO & GABBY, LLC and KAREN
KELLER, an individual,

Plaintiffs,

v.

AMAZON.COM, INC.,

Defendant.

Cause No. 13-cv-5941

COMPLAINT FOR COPYRIGHT
INFRINGEMENT, PATENT
INFRINGEMENT, VIOLATION OF
RIGHT OF PUBLICITY, DMCA
VIOLATIONS, TRADEMARK
INFRINGEMENT, AND UNFAIR
COMPETITION

JURY TRIAL DEMANDED

Plaintiffs Milo & Gabby, LLC and Karen Keller (collectively referred to as “Milo & Gabby”), by and through counsel, hereby complain of Defendant Amazon.com, Inc. as follows:

NATURE OF LAWSUIT

1. This is a complaint for violations of various State and Federal intellectual property laws arising from Defendant’s sales of products that constitute inferior knock-off duplicates of Plaintiffs’ protected products.

THE PARTIES

2. Plaintiff MILO & GABBY, LLC is a Washington State limited liability company engaged in the development, sale, and licensing of animal-shaped pillow cases, among other things.

3. Plaintiff Karen Keller is an individual residing in this judicial district.

1 4. On information and belief, Amazon.com, Inc. (“Amazon”) is a Delaware
2 Corporation with a principle place of business in this judicial district at 410
3 Terry Ave N, Seattle, WA 98109 and an Internet web presence at
4 www.amazon.com.

5 **JURISDICTION AND VENUE**

6 5. This is an action for patent infringement arising under Title 35 U.S.C. § 1,
7 *et. seq.* and for copyright infringement arising under Title 17 U.S.C. § 501, *et.*
8 *seq.* Accordingly, this Court has jurisdiction over the subject matter of the
9 Complaint under 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental
10 jurisdiction over the related state claims pursuant to 28 U.S.C. § 1367.

11 6. Personal Jurisdiction over the defendant is proper in this Court as the
12 defendant has its principal place of business in this district. Venue in this
13 judicial district is proper under 28 U.S.C. §§ 1391(b), (c) and/or 1400(b) in that
14 a substantial part of the events giving rise to the patent infringement claims
15 herein have taken place and may still be taking place in this judicial district.

16 **SUMMARY OF FACTS**

17 7. Milo & Gabby was founded by a husband and wife team of product
18 designers. Inspired by their four children and two beloved family pets they set
19 out to create pillowcases that would transform pillows from average to
20 extraordinary. The result was an adorable line of Cozy Companion Pillowcases;
21 eight animal-shaped, 100% cotton pillowcases that blend two favorite things:
22 stuffed animals and children’s favorite pillows (the “Cozy Companion
23 Products”).

24 8. The Milo & Gabby mark is protected by Federally registered U.S.
25 Trademark Registration Number 3291697, registered on September 11, 2007.

26 9. Milo & Gabby’s unique blend of fun and functional products meets two of
27 the most essential and timeless needs of children and their families: Cozy
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1 Companions combine the cuddly-comfort of a childhood “best friend/buddy”
2 with the practical “at-home and on-the-go” function families appreciate.
3 Children form immediate, enduring attachments to their Cozy Companion as
4 they quickly become their favorite “go-everywhere” choice.

5 10. Attached as Exhibit A are true and accurate captures of Milo & Gabby’s
6 website at which the company advertises and offers its Cozy Companion line of
7 products. As shown in Exhibit A, Milo & Gabby’s website and images thereon
8 are protected by valid U.S. copyrights, and are displayed in association with
9 proper copyright management information, including a proper copyright notice
10 and other information other information identifying the copyright owner of the
11 several works.

12 11. Milo & Gabby has enjoyed commercial success with its line of
13 animal-themed children’s accessories over the past five years. During that
14 period the company designed, sold and distributed their products to retailers and
15 e-tailers throughout the United States and internationally. Milo & Gabby’s
16 success escalated drastically starting in 2012 when the company entered into an
17 exclusive license arrangement in Asia. Since that time, sales of Milo & Gabby’s
18 products have grown drastically.

19 12. The growing success in the Asian market of Milo & Gabby’s products
20 has prompted the company to seek out a licensing partner in North America to
21 help continue the company’s dramatic expansion. However, Milo & Gabby has
22 been forced to stall that effort in light of Defendant’s misconduct as described
23 further below.

24 13. Defendant Amazon.com, Inc., without either the knowledge or
25 authorization of Milo & Gabby, began selling direct knock-off copies of Milo &
26 Gabby’s Cozy Companion Products. More specifically, on its amazon.com
27 website, Defendant Amazon offers for sale and sells products which purport to
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1 be the Milo & Gabby products but which are merely inferior copies of those
2 products in (the “Amazon knock-offs”).

3 14. The Amazon knock-offs are offered for sale directly from the website of
4 Defendant Amazon. Attached as Exhibit B are true and accurate screen captures
5 of Defendant Amazon’s website at which consumers may purchase the Amazon
6 knock-offs.

7 15. The Amazon knock-offs are offered for sale directly by Defendant
8 Amazon in its own direct marketing efforts, including by serving electronic
9 advertisements on the websites of others as well as e-mail marketing to potential
10 consumers directly from Defendant Amazon.

11 16. As shown in Exhibit B, the Amazon knock-offs are marketed using using
12 Milo & Gabby’s own marketing materials. Amazon is misrepresenting to the
13 public that it would be purchasing authentic Milo & Gabby products, even using
14 Milo & Gabby’s registered trademark on the amazon.com website. See attached
15 Exhibit C, showing Amazon’s unauthorized use of the Milo & Gabby mark.

16 17. As shown in Exhibit C, Amazon displays the Milo & Gabby marketing
17 materials, taken from the Milo & Gabby website, with Milo & Gabby’s
18 copyright management information removed from the Milo & Gabby materials.
19 Such conduct can only have been done with full knowledge of the existence of
20 the copyright management information and thus for the purpose of concealing
21 the identity of the actual owner of the materials, *e.g.*, Milo & Gabby.

22 18. Although consumers believe they are purchasing legitimate Milo &
23 Gabby products, Amazon in fact delivers to those consumers the Amazon
24 knock-offs, which differ substantially in quality from the Milo & Gabby
25 products. Attached as Exhibit D are true and correct photographs of several of
26 the Amazon knock-offs.

1 19. As is seen in Exhibit D, the Amazon knock-offs are each labeled with a
2 photograph depicting a child at sleep on an exemplar of the product within the
3 package. However, the product depicted in each photograph is in fact a Milo &
4 Gabby Cozy Companion Product and not an Amazon knock-off.

5 20. Most of the photographs shown in Exhibit D depict the actual children of
6 Plaintiff Karen Keller being used on the labels of the Amazon knock-offs.
7 Amazon is exploiting Ms. Keller's own children to sell counterfeit goods.

8 21. Amazon itself, directly, fulfills orders for the Amazon knock-offs and
9 ships the Amazon knock-offs to consumers who order those products from the
10 amazon.com website. Attached as Exhibit E are true and correct copies of the
11 boxes in which the Amazon knock-offs are shipped revealing that the Amazon
12 knock-offs are shipped directly by or under the control of Defendant Amazon.

13 22. The quality of the Amazon knock-offs is significantly inferior to the Milo
14 & Gabby products. Consumers misled into purchasing the Amazon knock-offs
15 provide negative reviews of the Amazon knock-offs which improperly creates a
16 negative marketing environment for the actual Milo & Gabby products, thus
17 harming Milo & Gabby's ability to market their own goods.

18 23. Attached as Exhibit F are true and correct screen captures of the
19 amazon.com website at which consumers who were misled into mistakenly
20 purchasing the Amazon knock-offs provided negative comments regarding the
21 quality of the Amazon knock-offs.

22 24. The quality issues identified by those dissatisfied consumers do not exist
23 with the Milo & Gabby products.
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THE PATENTS

25. Plaintiffs Milo & Gabby and Ms. Keller are the owner of all right, title, and interest in the following U.S. Design Patents, true and correct copies of which are attached as Exhibit G:

<u>Patent</u>	<u>Title</u>	<u>Issued</u>
D520,798	Dog-Shaped Pillow Case	May 16, 2006
D521,299	Rabbit-Shaped Pillow Case	May 23, 2006
D521,792	Cat-Shaped Pillow Case	May 30, 2006
D523,677	Dinosaur-Shaped Pillow Case	June 27, 2006
D551,889	Pony-Shaped Pillow Case	October 2, 2007

THE COPYRIGHTS

Plaintiff is the author and owner of the U.S. Copyrights identified in the table below, true and correct printouts of which are attached as Exhibit H:

<u>Number</u>	<u>Title</u>	<u>Filed/Issued</u>
1-976528811	Dinosaur	August 13, 2013
1-976817132	Dog	August 13, 2013
1-978660959	Cat	August 15, 2013
1-97905743	Bunny	August 15, 2013
1-985504482	Pony	September 11, 2013
1-992407599	Fish	September 11, 2013
1-1009623984	Boy Sleeping On Fish Pillowcase	October 22, 2013
1-1009928900	Girl Sleeping On Bunny Pillowcase	October 22, 2013
1-1009929001	Girl Sleeping On Cat Pillowcase	October 22, 2013
1-1009929033	Girl Sleeping On Pony Pillowcase	October 22, 2013
1-1009929064	Boy Sleeping On Dinosaur Pillowcase	October 22, 2013
1-1009929096	Boy Sleeping On Dog Pillowcase	October 22, 2013

CAUSES OF ACTION

I. Patent Infringement

26. As set forth above, Plaintiff Milo & Gabby is the owner of several design patents that protect the Milo & Gabby Cozy Companion Products. Defendant Amazon is making, using, selling, offering for sale, and/or importing the Amazon knock-offs which are virtually indistinguishable (but for quality) from Plaintiff Milo & Gabby's patented designs.

27. Defendant Amazon's actions constitute patent infringement under 35 U.S.C. § 271, *et seq.*

II. Copyright Infringement

28. As set forth above, Plaintiff Milo & Gabby is the owner of several copyrights in its products and in its promotional materials, including but not limited to the Cozy Companion Products and several photographs taken of children sleeping on exemplars of Milo & Gabby's Cozy Companion Products.

29. Defendant Amazon, without authorization, is distributing copies of Milo & Gabby's copyrighted works as the Amazon knock-offs and as labels on the Amazon knock-offs.

30. Defendant Amazon, without authorization, is publicly displaying numerous Milo & Gabby copyrighted images on the amazon.com website.

31. Defendant Amazon, without authorization, is distributing numerous Milo & Gabby copyrighted images on the labels of its Amazon knock-off products.

32. Defendant Amazon's conduct constitutes a violation of the U.S. Copyright Act, 15 U.S.C. § 501, *et. seq.*

III. Unfair Competition

33. Defendant Amazon violated RCW Chapter 19.86 due to its unfair methods of competition and unfair or deceptive acts or practices in the conduct of its trade or commerce.

1 34. By offering for sale, selling, importing, and distributing actual products
2 that include infringing materials, Amazon is directly liable for its own actions, as
3 set forth above. Amazon has sold, imported, and delivered the Amazon
4 knock-offs to consumers in this district.

5 **IV. Lanham Act**

6 35. Defendant Amazon's unauthorized use of Plaintiff's marketing materials
7 and its reproduction and emulation of Plaintiffs' photographs, images, and
8 products are intended to cause confusion, mistake or to deceive consumers as to
9 the source of origin of their products. Defendant's actions are likely to cause
10 members of the public who search for Milo & Gabby's genuine products to
11 believe that the goods being offered for sale, sold, and imported by Amazon to
12 believe that the Amazon knock-offs have an affiliation, connection, association,
13 origin, or sponsorship relationship with Milo & Gabby.

14 36. Defendant's actions constitute a false designation of origin in violation of
15 the Lanham Act, 15 U.S.C. § 1125(a)(1).

16 **V. Right of Publicity**

17 37. Defendant Amazon has misappropriated for its own commercial benefit
18 the photograph and/or likeness of Plaintiff Karen Keller's children on goods,
19 merchandise, and/or products entered into commerce in this state in violation of
20 RCW Chapter 63.60.

21 38. Defendant Amazon did so without the authorization of either Ms. Keller
22 or her children. Defendant Amazon's conduct has soiled and tainted forever the
23 ability of Plaintiffs to use the actual pictures of Ms. Keller's children free of the
24 cloud of dissatisfaction created by the inferior quality of the Amazon knock-offs.

25 **VI. Removal of Copyright Management Information**

26 39. Defendant Amazon did, without the authority of Milo & Gabby,
27 intentionally remove or alter copyright management information, distribute or
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1 import for distribution copyright management information knowing that the
2 copyright management information had been removed or altered without the
3 authority of Milo & Gabby, and/or distribute or import for distribution Milo &
4 Gabby works knowing that copyright management information had been
5 removed or altered without the authority of Milo & Gabby.

6 40. Defendant Amazon did so having reasonable grounds to know that it
7 would induce, enable, facilitate, or conceal a copyright infringement in violation
8 of the Digital Millennium Copyright Act, 17 U.S.C. § 1202.

9 **VII. Trademark Counterfeiting**

10 41. Defendant Amazon's unauthorized use in commerce of Plaintiff's actual
11 registered trademark in connection with the sale, offering for sale, distribution,
12 or advertising of the Amazon knock-offs is likely to cause confusion, or to cause
13 mistake, or to deceive in violation of 15 U.S.C. § 1114.

14 42. Defendant Amazon did reproduce, counterfeit, copy, or colorably imitate
15 Milo & Gabby's registered mark and did apply such reproduction, counterfeit,
16 copy, or colorable imitation to labels, signs, prints, packages, wrappers,
17 receptacles and/or advertisements intended to be used in commerce upon or in
18 connection with the sale, offering for sale, distribution, or advertising of the
19 Amazon knock-offs, such use being likely to cause confusion, or to cause
20 mistake, or to deceive.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Milo & Gabby and Karen Keller ask this Court to enter
23 judgment against Defendant and against its subsidiaries, affiliates, agents,
24 servants, employees and all persons in active concert or participation with them,
25 granting the following relief:
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1 A. An award of damages adequate to compensate Plaintiffs for the
2 infringement that has occurred, together with prejudgment interest from the date
3 infringement began;

4 B. An award of Defendant's profits under 35 U.S.C. § 289;

5 C. An award of Plaintiff's actual damages, including lost profits and/or a
6 reasonable royalty, and increased or enhanced damages as permitted under 35
7 U.S.C. § 284;

8 D. A finding that this case is exceptional and an award to Plaintiffs of their
9 attorneys' fees and costs as may be appropriate and as provided by 35 U.S.C.
10 § 285;

11 E. An award of defendant's profits, Plaintiffs' actual damages sustained by
12 the plaintiff, and the costs of the action under 15 U.S.C. § 1117(a);

13 F. Trebled damages pursuant to 15 U.S.C. § 1117(b);

14 G. Statutory damages of up to \$2,000,000 per mark per type of goods sold,
15 offered for sale, or distributed for trademark counterfeiting under 15 U.S.C. §
16 1117(c);

17 H. Statutory damages pursuant to the Digital Millennium Copyright Act for
18 the unauthorized removal of Plaintiffs' copyright management information under
19 17 U.S.C. § 1205;

20 I. An award of actual damages, trebled, and costs, including attorneys fees,
21 under the Washington Unfair Business Practices Act RCW § 19.86.090;

22 J. In addition to any other award, an award of Plaintiff's actual damages and
23 Defendant's profits for infringement of Plaintiffs' right of publicity under RCW
24 § 63.60.060;

25 K. An award of attorneys' fees under RCW § 63.60.060;

26 L. A permanent injunction prohibiting further infringement, inducement and
27 contributory infringement by Defendant;
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1 M. Prejudgment interest calculated from the time of the first occurrence of
2 any infringing activity through and until entry of judgment;

3 N. An award of any other damages and relief to which Plaintiffs are entitled
4 under the law; and

5 O. Such other and further relief as this Court or a jury may deem just and
6 proper.

7 **JURY DEMAND**

8 Plaintiffs demand a trial by jury on all issues presented in this Complaint.
9

10 Dated: October 24, 2013.

Respectfully submitted,

11 /Philip P. Mann

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